उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

29

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1315 OF 2000

APPELLANT Ganesh Ram, S/o Sakharam
IN JAIL Aged about 40 years, R/o Kakrel Police Station Somni, District Rajnandgaon, MP.

VERSUS

RESPONDENT State of Madhya Pradesh

Present:
Dr. Shailesh Ahuja, counsel for the appellant.
Mr. Neeraj Mehta, PL for the State/respondent.

ORAL JUDGMENT
(6th September 2007)

Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 14.3.2000 passed in S.T.No. 362/99 whereby learned Additional Sessions Judge, Durg has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo R.I. for ten years, pay a fine of Rs.500/- and in default of payment of fine to undergo additional R.I. for six months.

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2. Case of the prosecution in brief is that the accused is father of the prosecutrix, aged about 18 years, and they resided together along with Muritbai, step mother of the prosecutrix. The prosecutrix lodged a report on 2nd September 1999 making allegations against the accused that he committed rape on her at about 11.00 p.m. on 31.8.1999, which was witnessed by her step mother Muritbai. It has also been mentioned in the FIR that since two months before 31.8.1999 the accused forcibly rapped her and threatened her not to disclose this fact to any one and thereafter, he repeated this act every night. On the basis of above report offence was registered against the accused/appellant. The prosecutrix was sent for medical examination and lady Dr. N. Khan examined the prosecutrix and gave her report of Ex.P/5. After completing investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Durg.

3. During trial the prosecution examined eight witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the crime.

GRPRJ — FS/246— 2/2007 — 50,000.

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned above.

5. Learned counsel for the appellant submits that the appellant has been roped in a false case by his own wife Muritbai with whom he does not have cordial relations and the report has been lodged by the prosecutrix as per advice of Muritbai. He further submits that the prosecutrix was examined by Dr. N. Khan (PW-4) and she did not find any injuries over the person of the prosecutrix and opined that the prosecutrix is habitual of sexual intercourse and no definite opinion regarding recent intercourse can be given.

6. On the other hand, learned counsel for the State submits that conviction of the appellant is based on the statement of the prosecutrix who is none other than his own daughter, the offence was witnessed by his wife Muritbai and there is no reason for the prosecutrix and Muritbai to implicate the appellant in a false case and that too, for an offence of rape against his own daughter.

7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

GRPRJ — FS/246— 2/2007 — 50,000.

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8. The prosecutrix in her statement has stated that the accused is her father and PW-2 Muritbai is her step mother. All of them had gone to earn their livelihood to village Navataria and resided together in the same hutment of one Ansuiya. Two-three months before the incident the accused forcibly rapped her and threatened her not to disclose the incident to anyone and thereafter, he repeated the offence every night. In the cross-examination she has denied the suggestion that she lodged the report at the instance of her step mother Muritbai, though she has admitted that her step mother and her father occasionally quarreled with each other. In the lengthy cross-examination she has stuck to her statement of examination-in-chief. The defence has not been able to elicit anything which makes her evidence untrustworthy or unreliable. Her statement is corroborated by the statement Muritbai (PW-2), wife of the appellant and step mother of the prosecutrix, who has stated that they resided in the house of Ansuiya at village Navatariya where they had gone to earn their livelihood. All the three used to sleep on the floor together. A day before Rakhi in the night she woke up due to stomach ache and saw her husband committing rape with the prosecutrix and thereafter, the report was lodged. She had explained the reason for delay in lodging the report.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	9. Thus, from the statements of the above three witnesses i.e. PW-1 Ku. Chhoti, the prosecutrix, PW-2 Muritbai & PW-4 Dr. N. Khan, which is also corroborated by the FIR, involvement of the accused/appellant in the offence is established and the Court below has rightly reached to the conclusion that the appellant committed rape with his own daughter. 10. Learned counsel for the appellant submits that the appellant is in jail since 4.9.1999 and as such, he has already completed 8 years jail sentence, therefore, sentence of 10 years R.I. imposed on him may be reduced to the period already undergone by him. 11. Looking to the gravity of the offence that the appellant committed rape with his own daughter, prayer of learned counsel for the appellant cannot be accepted. 12. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed Sd/- DHIRENDRA MISHRA Judge	

K.I

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